



Keeping Northwest California wild since 1977

October 9, 2014

The Council on Environmental Quality
Attn: Horst Greczmiel
722 Jackson Place NW
Washington, DC 20503

RE: *Comments on Council of Environmental Quality (CEQ) Draft Guidance on Federal Agency Use of National Environmental Policy Act (NEPA) Programmatic Reviews Published in the Federal Register Vol. 79, No. 164, Monday, August 25, 2014*

Dear Mr. Greczmiel:

I am writing on behalf of the Environmental Protection Information Center (“EPIC”), a nonprofit organization that works to protect and restore ancient forests, watersheds, coastal estuaries, and native species in northwestern California. Consistent with this mission please accept the following comments regarding the Council’s proposed Draft Guidance to Federal Agencies (proposed guidance) for effective use of NEPA programmatic reviews. We appreciate the opportunity to comment on the guidance to federal agencies on the use of programmatic reviews and in particular the strong recognition given to public involvement in the process. In keeping with the spirit of public participation, EPIC notes the following regarding CEQ’s proposed guidelines:

Collaboration and Cooperation

It has been EPIC’s experience that while collaboration is well meaning it is rarely authentic. Our organization has commented on every timber sale on the Mendocino, Klamath, Shasta-Trinity and Six Rivers National Forests for well over a decade. While collaboration is within the spirit and intent of the Healthy Forest Restoration Act (HFRA), similar to the Guidance, it is often a “business as usual” approach for large-scale national forest projects, particularly on the Klamath National Forest as seen from the Petersburg Pines and current Jess Timber Sale on the Salmon/Scott River Ranger District. National Forest Supervisors and staff often circumvent collaboration and have used HFRA as a way to minimize alternatives and expedite extractive practices in order to meet timber sale targets. The proposed guidance set forth from the CEQ for collaborative direction is not mandatory and therefore, while stated that it is critical, remains meaningless unless embraced by the decision makers and planners.

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EPIC has not seen meaningful cooperation with state fish and wildlife agencies and other agencies, particularly with the California Department of Fish and Wildlife. If federal agencies are considering programmatic NEPA for large-scale landscape level treatments the proposed guidance should include clear guidance that federal agencies should cooperate with state agencies at the earliest opportunity, rather than rely on agencies to provide scoping comments.

Mitigation and Monitoring

Similar to collaboration and coordination, the proposed guidance does not require mitigation or monitoring. Without a requirement to do so, federal agencies, specifically the U.S. Forest Service (USFS) does not follow through with mitigations or monitoring. Although required by HFRA, in our experience mainly with the Klamath National Forest, the USFS has not prioritized or followed through with monitoring, even when commitments are agreed upon and written out. Mitigation and monitoring must be carried forward with long-term commitment and repercussions for not doing so. Without clear direction there is no persuasion for agencies to do the right thing.

Section B of the Proposed Guidance: Environmental Justice

The proposed guidance sets forth the importance of collaboration and communication among agencies, as well as the importance of public participation. However, there was no specific guidance regarding environmental justice, namely, Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” It would be beneficial to include this Executive Order in the guidance to agencies in light of its stated purpose: making it the responsibility of each federal agency to “achieve” environmental justice as “part of its mission in identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” Indeed, CEQ’s own guidance on the topic provides:

Early and meaningful public participation in the federal agency decision making process is a paramount goal of NEPA. CEQ’s regulations require agencies to make diligent efforts to involve the public throughout the NEPA process. Participation of low-income populations, minority populations, or tribal populations may require adaptive or innovative approaches to overcome linguistic, institutional, cultural, economic, historical, or other potential barriers to effective participation in the decision-making processes of Federal agencies under customary NEPA procedures.

CEQ, *Environmental Justice: Guidance Under the National Environmental Policy Act*, at p.13. Specific reference to environmental justice, particularly as provided in CEQ’s guidance, is warranted in its guidance on programmatic NEPA reviews, in order to promote the goals of environmental justice for those often unable to participate in the process but facing direct impact socially, culturally and economically. By way of example, the Pacific Northwest rural communities are typically impoverished communities. See, Issues in Pacific Northwest Forest

Management, at Chapter 7, *Forest Management and Rural Communities in the Pacific Northwest* (2000).

Programmatic Reviews Are Too Broad for the Scope of Significant Issues Within Pacific Northwest Forests

The proposed guidance provides: “A broad (e.g. regional) description may suffice for characterizing the affected environment in most programmatic NEPA reviews, so long as potentially impacted resources are meaningfully identified and evaluated.” *Proposed Guidance, at Section C(3)*. However, this may be too broad a generalization to provide substance in many situations. For instance, old growth and late seral forests in the Pacific Northwest have varying and multiple, interlocking layers of environmental issues precipitated by both past and current practices. See National Academies, Division on Earth & Life Studies, *Environmental Issues in Pacific Northwest Forest Management* (2000) (reporting, in part, on the multiple threats to biodiversity in old growth and successional forests in the Pacific Northwest). The intricacies associated with issues concerning forests (alone) demonstrate that programmatic NEPA reviews may develop lives of their own, and operate as *de facto* decisions in particular cases, notwithstanding CEQ guidance that these be tiered for purposes of site-specific projects. As a result, public participation on the issue may be narrowed.

The high level of significant issues in the dynamic, complex and diverse Pacific Northwest forests are sure to be problematic for any programmatic planning and if too large or allowing would not be in concert with the intent and spirit of NEPA. Further, the most current and best available science—particularly concerning climate change and the continued decline of Threatened, Endangered and Sensitive species populations—has not yet been incorporated in the outdated Land Resource Management Plans. It would therefore be prudent to delay or refrain from any large scale programmatic NEPA planning until forest plans are revised and up to date with the best available science.

Conclusion

A programmatic NEPA review is probably best suited for those projects with common timing, geography, and/or impacts. Several courts have so held.¹ The proposed guidance thus far tends to indicate that programmatic NEPA reviews are more akin to directives and is therefore not well timed for use on National Forests given that multiple national forest land resource management plans are outdated and not based on the best available science, particularly Pacific Northwestern forests. Because many of the USFS offices do not have a positive track record thus far on thousands of activities and projects on our national forests it is not clear why allowing larger landscape planning efforts should be streamlined or awarded at this time. If programmatic planning is indeed to be moved forward, these planning documents must be done so as to produce no cumulative or significant effect whatsoever given the imperiled state of wildlife throughout the United States and the global importance of our public trust resources and public lands.

¹ See e.g., *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1215 (9th Cir. 1998); *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291 (9th Cir. 2003).

Thank you for considering our concerns. Please do keep EPIC informed on the Draft Guidance for Programmatic Reviews.

Best Regards,

Kimberly Baker

A handwritten signature in black ink, appearing to read 'Kimberly Baker', with a stylized, cursive script.

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